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13 IN THE UNITED STATES DISTRICT COURT FOR THE
14 EASTERN DISTRICT OF CALIFORNIA
15

16 LARRY BERMAN,

17 Plaintiff,

18 v.

19 CENTRAL INTELLIGENCE AGENCY,

20 Defendant.
21

CIV. S-04-2699 DFL-DAD

ANSWER

22 Pursuant to Federal Rule of Civil Procedure 8(b), the Central Intelligence Agency
23 ("CIA"), by its undersigned attorney, hereby files this answer as follows:

24 **FIRST DEFENSE**

25 The documents requested in Plaintiff's complaint are exempt from disclosure under
26 Sections 552(b)1, (3) and (5) of the Freedom of Information Act ("FOIA").
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RESPONSES TO PLAINTIFF'S ALLEGATIONS

In response to Plaintiff's Complaint, Defendant admits, denies and otherwise avers as follows:

1. The first sentence of paragraph 1 states the nature of Plaintiff's claim to which no response is required. To the extent a response is deemed required, the first sentence is denied. The second sentence is admitted insofar as it alleges that Defendant created Presidential Daily Briefs ("PDBs") dated August 6, 1965 and April 2, 1968,¹ and that the PDBs include a summary of intelligence information

2. Defendant admits the first sentence of paragraph 2 except to the extent that it characterizes the nature of Plaintiff's claim. No response is required to Plaintiff's statement of the nature of his claim. To the extent a response is deemed required, the remainder of the first sentence is admitted except to deny that one of the three PDBs to which Plaintiff seeks access exists. The second sentence is denied. The third sentence is denied except to admit that Defendant maintains a website and respectfully refers the Court to that website, which speaks for itself. With regard to the fourth sentence, Defendant respectfully refers the Court to Exhibit A to the Complaint, which speaks for itself, and denies the fourth sentence to the extent that it is inconsistent with the Exhibit.

3. The first sentence of paragraph 3 is denied. Defendant admits the second sentence to the extent that it alleges that some Central Intelligence Bulletins have been declassified and made public. The third sentence is denied.

4. The first sentence of paragraph 4 is denied except to admit that there have been disclosures of portions of two PDBs in addition to the disclosures referenced in paragraph 2 of the Complaint. The second sentence is admitted insofar as it alleges that redacted excerpts from

¹ The second sentence of paragraph 1 refers to PDBs from three dates, including March 31, 1968. No PDB was created for March 31, 1968.

1 the PDBs of December 4, 1998 and August 6, 2001, were declassified and provided to the
2 National Commission on Terrorist Attacks upon the United States. The remainder of the second
3 sentence is denied. With regard to the third sentence, Defendant respectfully refers the Court to
4 Exhibit B to the Complaint, which speaks for itself, and denies the third sentence to the extent
5 that it is inconsistent with the Exhibit. The fourth sentence is admitted insofar as it alleges that
6 portions of the PDBs of December 4, 1998 and August 6, 2001 were declassified. The fifth
7 sentence is denied. With regard to the sixth sentence, Defendant respectfully refers the Court to
8 Exhibit B to the Complaint, which speaks for itself, and denies the sixth sentence to the extent
9 that it is inconsistent with the Exhibit. The seventh sentence is admitted insofar as it alleges that
10 the book "From the Shadows" was reviewed and approved for publication pursuant to
11 Defendant's procedures. The eighth sentence is denied except to admit that the requested PDBs
12 are 37 and 40 years old and to state that Defendant lacks information and knowledge sufficient to
13 form a belief as to Plaintiff's information and belief.

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16 5. The first sentence of paragraph 5 is denied except to admit that Defendant has
17 refused to publicly release two of the PDBs requested by Plaintiff. Defendant states that it lacks
18 knowledge and information sufficient to form a belief as to the second sentence.

19 6. Defendant denies the allegations contained in Paragraph 6 of the Complaint
20 except to admit that Defendant reviews all FOIA requests for disclosure of any PDB in the
21 context that the PDB is a unique intelligence document prepared for the President and his most
22 senior advisors as part of a series of documents that must be classified as a series.

23 7. The first sentence of paragraph 7 is denied except to admit that Defendant reviews
24 all FOIA requests for disclosure of any PDB in the context that the PDB is a unique intelligence
25 document prepared for the President and his most senior advisors as part of a series of documents
26 that must be classified as a series.
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1 8. Defendant denies the allegations made in Paragraph 8 except to admit that
2 Defendant reviewed Plaintiff's FOIA request in the context that the PDB is a unique intelligence
3 document prepared for the President and his most senior advisors as part of a series of documents
4 that must be classified as a series.
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6 9. Paragraph 9 contains Plaintiff's jurisdictional allegations, to which no answer is
7 required. To the extent that a response is deemed required, paragraph 9 is admitted.

8 10. Paragraph 10 contains plaintiff's venue allegations, to which no answer is
9 required. To the extent that a response is deemed required, Defendant asserts that it lacks
10 knowledge and information to form a belief as to the allegations in paragraph 10.

11 11. Defendant lacks knowledge and information sufficient to form a belief as to the
12 first sentence of Paragraph 11. The second and third sentences are admitted.

13 12. Paragraph 12 contains Plaintiff's conclusions of law, to which no response is
14 required. To the extent that a response is deemed required, the first sentence of paragraph 12 is
15 admitted, and the second sentence of paragraph 12 is admitted insofar as it alleges that Defendant
16 has possession of the records at issue.
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18 13. Paragraph 13 is admitted.

19 14. Paragraph 14 is admitted.

20 15. Paragraph 15 is admitted.

21 16. The first sentence of paragraph 16 of is admitted. With regard to the remainder of
22 the paragraph, Defendant respectfully refers the Court to Exhibit F, which speaks for itself, and
23 denies the remainder of paragraph 16 to the extent that it is inconsistent with the Exhibit.

24 17. Paragraph 17 is admitted.

25 18. Paragraph 18 is admitted.

26 19. Paragraph 19 is admitted.

27 20. Defendant repeats and incorporates herein its responses to paragraphs 1-19 above.
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1 21. Paragraph 21 contains Plaintiff's conclusions of law, to which no response is
2 required. To the extent that a response is deemed required, the paragraph is denied.

3 22. Paragraph 22 contains Plaintiff's conclusions of law, to which no response is
4 required. To the extent that a response is deemed required, the paragraph is denied.

5 23. Paragraph 23 contains Plaintiff's conclusions of law, as to which no response is
6 required. To the extent that a response is deemed required, the first sentence of paragraph 23 is
7 admitted, and the second sentence of paragraph 23 is admitted insofar as it alleges that Defendant
8 has possession and custody of the records at issue.

9 The remainder of Plaintiff's Complaint constitutes Plaintiff's prayer for relief to which no
10 response is required. To the extent that an answer is deemed required, Defendant denies that
11 plaintiff is entitled to the relief requested or to any relief and demands judgment for the
12 Defendant. Except to the extent expressly admitted above, Defendant denies each and every
13 allegation in the Complaint.
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1 Dated: February 22, 2005
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3 Of Counsel
4 JONATHAN FERRY,
5 Assistant General Counsel
6 Central Intelligence Agency

Respectfully submitted,

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8 By: /s/ Caroline Lewis Wolverton
9 CAROLINE LEWIS WOLVERTON
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